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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WADE JACKSON, KEN FROST,
KIM JONES, and HUH JOON

Appeal 2009-012516
Application 10/628,555
Technology Center 3600

Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and
KEVIN F. TURNER, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF CASE

Appellants seek our review under 35 U.S.C. § 134 of the Final Rejection of claims 1-9 and 11-23. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.²

THE INVENTION

Appellants' claimed invention relates to a method and system of dynamically allocating products to retailers for sale to consumers. (Abs.).

Independent claim 1, which is deemed to be representative, reads as follows:

1. A system for use by a sales administrator for allocating product to a plurality of locations, comprising:
 - an accounts interface for allowing the sales administrator to define accounts for product allocation, each said account corresponding to at least one said location in said plurality of locations;
 - a products interface for allowing the sales administrator to define products for allocation among said plurality of locations;
 - an allocation interface that enables the sales administrator to assign and/or reassign an allocation method for each defined product, the allocation method being at least one of a fixed allocation method, a static allocation method, and a dynamic allocation method;

² Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed Sept. 23, 2008) and Reply Brief ("Reply Br.," filed Mar. 23, 2009), and the Examiner's Answer ("Ans.," mailed Jan. 23, 2008).

a computer program that summarizes analysis statistics by allocation method, time and products;
a statistics interface that displays the summarized analysis statistics and enables the sales administrator to perform a historical analysis of product performance by account; and
a computer program that allocates a launch quantity to each account for a new product launch and allocates product to each account for replenishment of a previously launched product, based on the allocation method assigned to the product and in accordance with a predefined business allocation goal provided by the sales administrator for the plurality of locations.

THE REJECTION

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Huang et al.	6,151,582	Nov. 21, 2000
Dovolis	US 2001/0034609 A1	Oct. 25, 2001
Capazario et al.	US 2003/0154141 A1	Apr. 14, 2003

The Examiner rejected claims 1-9 and 11-23 under 35 U.S.C. § 103(a) as being unpatentable over Capazario, Huang, and Dovolis.

ISSUES

Appellants generally argue that the combination of Capazario, Huang, and Dovolis does not teach or suggest each and every limitation of independent claims 1 and 13, or their respective dependents. (App. Br. 11). Specifically, Appellants argue that the combination does not teach or suggest the step of “allocating a launch quantity to each account for a new product launch and allocating product to each account for replenishment of a

previously launched product, based on the allocation method assigned to the product and in accordance with a predefined business allocation goal provided by the sales administrator for the plurality of locations,” as recited by independent claims 1 and 13. (App. Br. 14-15). Additionally, Appellants argue that the combination of Capazario, Huang, and Dovolis is improper. (App. Br. 11-12). In response, the Examiner finds that the combination of Capazario, Huang, and Dovolis teaches all the claimed limitations of at least independent claims 1 and 13, and as such, the Examiner has satisfied the burden of presenting a prima facie case of obviousness. (Ans. 13-15).

Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Thus, the issues arising from the respective positions of Appellants and the Examiner are:

Did the Examiner err in rejecting claims 1-9 and 11-23 under 35 U.S.C. § 103(a) as unpatentable over Capazario, Huang, and Dovolis and would a person with ordinary skill in the art have combined Capazario, Huang, and Dovolis to arrive at the claimed invention?

FINDINGS OF FACT

The record supports the following findings of fact (FF) by at least a preponderance of the evidence. *In re Caveney*, 761 F.2d 671, 674 (Fed. Cir. 1985) (explaining the general evidentiary standard for proceedings before the Office).

Claim Interpretation

1. Appellants have not directed us to a lexicographic definition of the term “predefined business allocation goal” in their disclosure.

2. Appellants’ Specification describes in the context of a “predefined business allocation goal” that “[t]he system enables dynamic allocations by taking into account a variety of information over time to assure that allocation goals are met.” (Spec. ¶ [0001]).

Capazario

3. Capazario is directed to an image recognition inventory management system which *inter alia* provides computerized inventory management to maximize the sale of products, minimize waste, and allow stock management in a number of different locations. (¶ [0002]).

4. Capazario’s system generates automatic product reorders and routine sales reports through a graphical interface. (¶¶ [0017], [0058]).

5. Capazario describes that users input quality and quantity data for products on display through the interface into a central computer to determine product displays as a function of product placement and quantity. (¶ [0013]).

6. Capazario describes that a supervisor can be notified about a change in stock by the image recognition inventory management system and then can make manual changes to the inventory of the store, and if the product is not in stock, set up an order and delivery of the goods needed. (¶ [0088])

7. Capazario describes that the image recognition inventory management system can be used in conjunction with any retail product. (¶ [0091]).

8. Capazario's system allows an in-store product representative or field representative to enter audit information and permits uniform reporting from store to store into a central server database. (¶ [0054]).

9. Capazario's central server database is programmed to produce out-of-stock reports, trend graphs, store audit, planograms, and reorders. (¶ [0054]).

Huang

10. Huang is directed to a decision support system for managing a networked supply chain that provides a user interface which takes into account a particular user's view point (e.g., plant manager, sales manager). (col. 1, ll. 53-57).

11. Huang's system allows a manufacturer or vendor to plan the replenishment or supply of goods to a customer by integrating information about a product, including current, past, and projected future sales and inventory. (col. 2, ll. 12-16).

12. Huang describes a sales forecasting and planning module which permits statistical forecasts based on at least historical sales, time or seasonable factors. (col. 44, l. 39 – col. 45, l. 3).

13. Huang describes that the aggregate production plan is often modified by the aggregate production planning (APP) module to reflect changes in product, sales, and inventory. (col. 31, ll. 39-44).

Dovolis

14. Dovolis is directed to a system and method for managing asset information which includes a web server and a database in connection with the Internet. (Abs.).

15. Dovolis describes that its asset management system benefits consumers, retailers and vendors by automatically registering warranty information at the point of sale providing access to the product manuals, repair manuals, and warranty information for the consumer and retail sales personnel. (¶ [0092]).

16. Dovolis describes that its asset management system can consolidate service records from different shops. (¶ [0093]).

PRINCIPLES OF LAW

Obviousness

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966); *see*

also KSR, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

ANALYSIS

Claims 1-9 and 11-23 rejected under 35 U.S.C. § 103(a) as being unpatentable over Capazario, Huang, and Dovolis.

Appellants argue that the combination of Capazario, Huang, and Dovolis does not teach or suggest the step of “allocating a launch quantity to each account for a new product launch and allocating product to each account for replenishment of a previously launched product, based on the allocation method assigned to the product and in accordance with a predefined business allocation goal provided by the sales administrator for the plurality of locations,” as recited by independent claims 1 and 13. (App. Br. 11, 14-15; *see also* Reply Br. 2, 7). In making this argument, Appellants argue that “. . . Huang merely discloses a supply management decision process that presumably accounts for dynamic replanning . . . [n]one of these factors constitute a predefined business allocation goal provided by the sales administrator for the plurality of locations....” (App. Br. 15).

We are not persuaded by Appellants’ argument and agree with the Examiner that Capazario teaches a system for allocating product inventory to replenish a product. (FF C1, C2, C5). Additionally, we agree with the Examiner that Huang teaches a decision support system for managing a supply chain that uses a sales forecasting and planning module which creates statistical forecasts based on at least historical sales, time or seasonable

factors to create a production or replenishment plan. (FF H1, H2, H3, H4). Since Appellants have not directed us to a specific definition of a “predefined business allocation goal,” (FF 1, 2) under the broadest reasonable interpretation, consistent with Appellants’ Specification and the scope of Appellants’ claims, we find that a “predefined business allocation goal,” would be any input received such as a location or product quantity. Accordingly, we find that at least Capazario and Huang both teach a dynamic allocation method (FF C4, C6, H2, H4) which makes obvious the step of “allocating a launch quantity to each account for a new product launch and allocating product to each account for replenishment of a previously launched product, based on the allocation method assigned to the product and in accordance with a predefined business allocation goal provided by the sales administrator for the plurality of locations,” as recited by independent claims 1 and 13. As such, Appellants’ argument is not persuasive.

Additionally, Appellants argue that the combination of Capazario, Huang, and Dovolis is improper based upon the Examiner’s conclusory statement which lacks an articulated reasoning with some rational underpinning to support the conclusion of obviousness. (App. Br. 11, *see also* Reply Br. 1-6). To the extent Appellants seek an explicit suggestion or motivation in the reference itself, this is no longer the law in view of the Supreme Court’s holding in *KSR Int’l Co.*, 550 U.S. at 418. The Examiner has provided an articulated reasoning with rational underpinning for why a person with ordinary skill in the art would modify the image recognition inventory management system of Capazario which *inter alia* provides

computerized inventory management to maximize the sale of products, minimize waste, and allow stock management in a number of different locations (FF C2), to incorporate the sales forecasting and planning module of Huang which permits statistical forecasts based on at least historical sales, time or seasonable factors to create a replenishment plan. (FF H2, H3). Specifically, the Examiner articulates a rationale based on “allowing the manufacturer or vendor to plan the supply of goods and services for a customer that integrates all information about a product, including current, past and projected future sales and inventory, into a feasible replenishment plan (citation omitted).” (Ans. 4-5).

Similarly, the Examiner has provided an articulated reasoning with rational underpinning for why a person with ordinary skill in the art would modify the image recognition inventory management system of Capazario and Huang’s statistical forecasts, discussed *supra*, with the system and method for managing asset information which includes a web server and a database in connection with the Internet, as taught by Dovolis. (FF D1). Specifically, the Examiner articulates a rationale based on “providing a system and method for managing personal and/or business assets (citation omitted).” (Ans. 5-6).

We agree with the Examiner, and find that the modifications proposed by the Examiner are nothing more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement. *See KSR*, 550 U.S. at 417. Further, Appellants have not proffered any arguments as to why these substitutions of known elements would not be obvious, but only make assertions as to their

inoperability. (App. Br. 13-14). Therefore, the combination of Capazario, Huang, and Dovolis makes obvious the subject matter of independent claims 1 and 13. Accordingly, we find these arguments unpersuasive.

Further, Appellants argue that the Examiner has employed a piecemeal examination of the independent claims 1 and 13. (App. Br. 16, *see also* Reply Br. 7). Specifically, Appellants generally argue that the Examiner has “improperly divorce[d]” specific claim limitations, which would be better understood as originally claimed. (App. Br. 16). While we agree with Appellants’ arguments that the Examiner’s Final Office Action is ambiguous with respect to the manner the claims are addressed, we nonetheless find that the Examiner has provided a sound rejection on the basis of the prior art references that makes obvious the present invention as claimed. Thus, we find that the Examiner has presented a *prima facie* case of obviousness based on the combination of Capazario, Huang, and Dovolis, and as such find Appellants arguments unpersuasive as to a piecemeal examination.

Lastly, Appellants argue that the combination of Capazario, Huang, and Dovolis is improper in that none of the references “appear to be related to each other,” we disagree and are not persuaded by Appellants’ arguments. (App. Br. 11-14). The Appellants appear to be arguing that Capazario, Huang, and Dovolis are nonanalogous to each other and therefore one of ordinary skill would not be led to combine their teachings to arrive at the claimed subject matter. We are not persuaded by this argument as to error in the rejection. Whether a reference is analogous art is part of the analysis of the scope and content of the prior art in the obviousness determination. *See*

Heidelberger Druckmaschinen AG v. Hantscho Commercial Prods. Inc., 21 F.3d 1068, 1071 (Fed. Cir. 1994).

The analogous-art test requires that the Board show that a reference is either in the field of the applicant's endeavor or is reasonably pertinent to the problem with which the inventor was concerned in order to rely on that reference as a basis for rejection. References are selected as being reasonably pertinent to the problem based on the judgment of a person having ordinary skill in the art.

In re Kahn, 441 F.3d 977, 986-87 (Fed. Cir. 2006) (Internal citations omitted).

A reference is reasonably pertinent if, even though it may be in a different field of endeavor, it logically would have commended itself to an inventor's attention in considering his problem because of the matter with which it deals. *In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992). Capazario, Huang, and Dovolis are reasonably pertinent to the problem with which the Appellants are concerned because they address the question of computerized inventory management and product allocation for different locations over a network. (FF C1, H1, D1). Although Dovolis does not explicitly address allocating product quantity, that is something both Capazario and Huang address. (FF C6, C7, H2, H3). Nevertheless, because Capazario and Huang are concerned with product allocation, a problem the Appellants are seeking to address with their method and system, and Dovolis is concerned with managing asset information from several locations over a network (FF D2, D3), we find that Capazario, Huang, and Dovolis, are analogous art and would commend themselves to the attention of one of ordinary skill in the art. Therefore, Appellants' arguments are not persuasive.

Claims 2-9, 11, 12, and 14-23

Appellants do not separately argue claims 2-9, 11, 12, and 14-23, which depend from claims 1 and 13, respectively, and so has not shown that the Examiner erred in rejecting claims 2-9, 11, 12, and 14-23 under 35 U.S.C. § 103(a) as being unpatentable over Capazario, Huang, and Dovolis for the same reasons we found as to claims 1 and 13, *supra*.

CONCLUSION OF LAW

We conclude that the Appellants have not shown that the Examiner erred the Examiner err in rejecting claims 1-9 and 11-23 under 35 U.S.C. § 103(a) as unpatentable over Capazario, Huang, and Dovolis.

DECISION

The decision of the Examiner to reject claims 1-9 and 11-23 is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2007).

AFFIRMED

ack

cc:

Appeal 2009-012516
Application 10/628,555

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